IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00187-COA

CLAUDE GRIFFIN, CLYDA MAE MYERS AND TAMORA ROBINSON

APPELLANTS

V.

LOTTIE GRIFFIN (CAMPBELL)

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:
02/13/96
TRIAL JUDGE:
HON. DENISE OWENS
COURT FROM WHICH APPEALED:
HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:
EDWIN E. KERSTINE
ATTORNEY FOR APPELLEE:
NANCY BECK

NATURE OF CASE:

CIVIL - REAL PROPERTY

TRIAL COURT DISPOSITION:

SUIT TO SET ASIDE CONVEYANCES: DISMISSED

DISPOSITION:

AFFIRMED: 7/21/98

MOTION FOR REHEARING:
CERTIORARI:
MANDATE:

BEFORE BRIDGES, C.J., COLEMAN, and DIAZ, JJ

DIAZ J. FOR THE COURT

The Appellants assert that the Chancellor committed reversible error in dismissing their lawsuit to set aside certain real property conveyances. They argue (1) that the deeds in question were fraudulently recorded and thus the chancellor's judgment is void; (2) that the chancellor erroneously applied the doctrine of *res judicata* and *collateral estoppel* to bar their lawsuit; (3) that the identities for *res judicata* and *collateral estoppel* were not met with regard to the properties which were not adjudicated in the previous decrees of divorce; and (4) that the chancellor abused her discretion in precluding the appellants from pursuing discovery. Finding the foregoing arguments without merit, we affirm.

FACTS

Sylvester and Lottie Griffin were married on July 28, 1969. Prior to and during the marriage, Sylvester acquired several parcels of real estate. On July 11, 1983, Lottie filed a complaint for divorce against Sylvester and sought the division of real property, some of which was titled in both parties' names and some of which was titled in Sylvester's name only. During the subsequent divorce proceedings, Lottie discovered eight parcels of land which has been deeded to Sylvester by relatives, but which had never been recorded. Lottie then notified her attorney, who with the chancellor's permission, recorded the previously, unrecorded deeds. The appellants, who are successors in title to Sylvester, then filed a complaint for declaratory judgment, asking the lower court to declare the deeds null and void. The court subsequently issued its opinion, granting Lottie's motion to dismiss on the grounds of *collateral estoppel* and *res judicata*. It is from this order that the appellants now appeal.

DISCUSSION

I. WERE THE DEEDS FRAUDULENTLY RECORDED SO AS TO RENDER THE CHANCELLOR'S JUDGMENT VOID?

The appellants first seek cancellation of the eight deeds which were recorded by Lottie's attorney without consent of either the grantors or the grantee. They claim that there was no delivery by the grantors and no acceptance by the grantee, and thus the subsequent recording by Lottie's attorney rendered the deeds invalid. As a result, the

appellants claim that the chancellor's judgment was void. The supreme court has held that the delivery and acceptance of a deed is largely a matter of intention of the parties, manifested by their words, acts and the circumstances surrounding the transaction. *Odom v. Forbes*, 500 So.2d 997 (Miss. 1987). The tax records in the present case reveals that Sylvester Griffin claimed ownership of many of the properties on his federal income taxes. As a result, the chancellor found that the surrounding circumstances clearly indicates that the property in question belonged to Sylvester. This Court will not "disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Anderson v. Anderson*, 692 So.2d 65, 70 (Miss. 1997). Since there is substantial evidence in the record to support Sylvester Griffin was the rightful owner of the property in question, we find no evidence to support the appellants' allegations that the chancellor's judgment was based on void conveyances. Accordingly, we find no merit in the appellants first assignment of error.

II. DID THE CHANCELLOR ERRONEOUSLY APPLY THE DOCTRINES OF *RES JUDICATA* and *COLLATERAL ESTOPPEL* TO BAR THE APPELLANT'S LAWSUIT?

In order for the doctrine of *res judicata* to apply, four identities must exist: (1) identity of the subject matter, (2) identity of the cause of action, (3) identity of the parties, and (4) identity of the quality or character of a person against whom a complaint is made. *Estate of Anderson v. Deposit Guar. Nat'l Bank*, 674 So.2d 1254, 1256 (Miss. 1996). *Collateral estoppel* precludes the parties from re-

litigating a specific issue actually litigated, determined by, and essential to the judgement to the judgment in a former action. *Norman v. Bucklew*, 684 So.2d 1246, 1254 (Miss. 1996).

The property issues in the Appellants' Complaint for Declaratory Judgment are the same as were addressed in the divorce proceeding, thereby satisfying the first requirement for *res judicata*. The identity of the cause of action in the complaint and in the divorce proceeding are also the same, in that both cases involve ownership of property. As for the third requirement of identity of parties, clearly Lottie Griffin is the same party in both lawsuits. The appellants argue that since Sylvester was not a Complaint for Declaratory Judgment, the third requirement for *res judicata* was not satisfied. However, strict identity of parties is not necessary in order to satisfy this identity element. *Russell v. Sunamerica Sec. Inc.* 962 F.2d 1169, 1173 (5th Cir. 1992). Since appellants are successors in title to Sylvester, *res judicata* is justified in this situation. Therefore, the third prong of the test is satisfied. Fourth, the identity of the quality and character of the person against whom the claim is made-Lottie Griffin-is identical in both proceedings.

The chancellor was also justified in concluding *collateral estoppel* acted as a bar to the appellants's lawsuit. The essential issue of property division was addressed and determined in the judgment of divorce, thereby precluding the parties from re-litigating this matter. As such, we conclude that the chancellor was within her discretion in applying the doctrines of *res judicata* and *collateral estoppel* to bar the appellants's lawsuit.

III. WERE THE IDENTITIES FOR *RES JUDICATA* and *COLLATERAL ESTOPPEL* MET WITH REGARD TO THE PROPERTIES WHICH WERE NOT ADJUDICATED IN THE PREVIOUS DECREES OF DIVORCE?

The appellants adopt the same argument as the made in their second issue, with one exception. They argue that five of the eight parcels of land were never adjudicated in the previous decrees of divorce, thereby precluding the application of *res judicata* and *collateral estoppel*. While the five properties in question were not adjudicated to be Lottie's assets, the chancellor found that the property addressed in the divorce was clearly Sylvester Griffin's and was also the subject of the appellants's declaratory judgment suit. A careful review of the record reveals no abuse of discretion; therefore, we decline the appellants's invitation to hold the chancellor in error on this issue.

IV. DID THE CHANCELLOR ABUSE HER DISCRETION IN PRECLUDING THE APPELLANTS FROM PURSUING DISCOVERY?

Finally, the appellants argue that the chancellor erred in denying them the opportunity to pursue discoverable matters from Lottie Griffin. However, the appellants fail to advise this Court regarding what they might reasonably have expected additional discovery to produce. *See Marx v. Truck Renting and Leasing Assn, Inc.*, 520 So.2d 1333, 1344 (Miss. 1997). The supreme court has stated that the control of discovery rests within the sound discretion of the lower court. *Broadhead v. Bonita Lakes Mall, Ltd. Partnership*, 702 So.2d 92, 104 (Miss. 1997). In the present case, we find

no abuse of the chancellor's discretion, thus, the appellants's final assignment of error is without merit.

THE JUDGMENT OF THE HINDS COUNTY CHANCERY COURT IS AFFIRMED, COST ARE ASSESSED AGAINST THE APPELLANTS.

BRIDGES, C.J. AND HINKEBEIN, KING AND PAYNE,JJ, CONCUR.

McMILLIN,P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY THOMAS,P.J., AND COLEMAN, HERRING AND SOUTHWICK, JJ.

McMILLIN, P.J., DISSENTING:

I respectfully dissent. It may be the case that the chancellor, in making the division of marital assets between Sylvester Griffin and Lottie Griffin (now Lottie Campbell), concluded that Sylvester Griffin was the owner of the eight tracts involved in the present dispute. However, that does not alter the fact that the appellants in this action, who were never made parties to the divorce proceeding, claim title to the same property by asserting that the deeds that vested record title in Sylvester Griffin were never delivered with the requisite formality necessary to constitute an act of conveyance. *See Greenlee v. Mitchell,* 607 So.2d 97, 107 (Miss. 1992). By the virtue of that assertion, the appellants have set up a claim that predates and is superior to Griffin's purported interest. From a purely legal standpoint, their claim, is in fact, antagonistic to Griffin's. There is, thus, no certainty that Griffin was disposed to, or did, in fact vigorously litigate the issue of lack of delivery in the divorce

proceeding. It is therefore, improper to invoke considerations of res judicata because of the absence of one of the necessary identities; *i.e.*, the identity of the parties in e divorce proceeding and this action. The majority incorrectly asserts that the 'Identity' issue is satisfied by the fact that "the appellants are *successors in title* to Sylvester ...."(emphasis supplied). Based on their assertion that they were never divested of title, the appellants are, in fact, claiming to be *predecessors in title* to Griffin--a very different proposition indeed. Being a predecessor in title does not invoke the same considerations as the case where one is claiming as a successor in title. If A claim title to real property in opposition to B's competing claim and A's claim does not depend in any way on the strength of B's title, it is impossible for A's interest to be adequately represented in litigation which B is a party but A is not. A successor in interest necessarily relies on the strength of his predecessor's title to support his claim. Thus the "identity of parties" consideration is satisfied in the eyes of the law by an assumption that the predecessor will vigorously defend his interest and will thereby adequately protect the interest of his absent successor, since the successor can, as a general rule, obtain no greater title than was held by his predecessor. *Eastlawn Dev. Co. v. Wells*, 311 SO.2d 334, 338 (Miss. 1975); *Fairley v. Tucker*, 253 So.2d 852, 853 (Miss. 1971).

There may be little to the appellants' claims. The record gives every indication that Sylvester Griffin was embarked on a long-standing devious scheme to conceal his assets from his wife and from his other creditor. By virtue of the fact that the appellants are Sylvester Griffin's close relatives (or those relatives' successors in interest), it may be a subject of fair inquiry as to whether these appellants were willing participants in Griffin's scheming. If that is the case,

the law gives Lottie Campbell remedies to redress her injury that extend beyond prevailing on the merit of this litigation. Nevertheless, even the strongest suspicion that some skulduggery is afoot does not permit the chancellor--or this Court-- to dismiss a claim such as that asserted in this action on principals of res judicata or collateral estoppel. No one with standing to assert the lack of delivery of these eight deeds to Sylvester Griffin has ever been permitted the opportunity to litigate that claim. When that claim is summarily dismissed without some inquiry as to its validity, the litigants advancing that claim have been denied the most fundamental right of due process. Claims may be dismissed because they are without legal merit but not because they are unsavory.

THOMAS, P.J., COLEMAN, HERRING AND SOUTHWICK, JJ., JOIN THIS SEPARATE WRITTEN OPINION.